



# HOUSE OF LORDS

Revised transcript of evidence taken before

**The Select Committee on the European Union**

Home Affairs, Health and Education (Sub-Committee F)

Inquiry on

**TOBACCO PRODUCTS DIRECTIVE**

*Evidence Session No. 2*

*Heard in Public*

*Questions 24 - 40*

WEDNESDAY 13 MARCH 2013

11 am

Witnesses: Anna Soubry MP and Andrew Black

Members present

Lord Hannay of Chiswick (Chairman)  
Lord Avebury  
Lord Blencathra  
Viscount Bridgeman  
Lord Richard  
Lord Sharkey

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**Examination of Witnesses**

**Anna Soubry MP**, Parliamentary Under-Secretary of State, Department of Health, and  
**Andrew Black**, Tobacco Programme Manager, Department of Health.

**Q24 The Chairman:** Well, good morning, Minister, and thank you for coming along to give us evidence today on the Commission’s proposal for a revision of the EU’s Tobacco Products Directive. This Sub-Committee is the House of Lords EU Sub-Committee on Home Affairs, Health and Education, and we are responsible for scrutinising health legislation. Given the importance of this proposal, we have decided to carry out what we call “enhanced scrutiny” on it—that is to say, we have invited key stakeholders to provide oral evidence to inform our deliberations. Last Wednesday we heard from Cancer Research UK and the Tobacco Manufacturers’ Association. After today’s session, we will send you a fairly detailed letter. It will not be a report, because we are not doing a full report, but it will be more detailed than our normal correspondence, outlining our thoughts and recommendations on the Commission’s proposal. As you know, this session is open to the public. A webcast of the session goes out live as an audio transmission and is subsequently accessible via the parliamentary website. A verbatim transcript will be taken of your evidence and this will be put on the parliamentary website. A few days after this evidence session, you will be sent a copy of the transcript to check it for accuracy and we would be

grateful if you could advise us of any corrections as quickly as possible. If after this session you wish to clarify or amplify any points made during your evidence, or have any additional points to make, you are welcome to submit supplementary evidence to us. I should just add for the Members of the Committee what you said to me outside, Minister, that you are a bit constrained by the fact that there is a Government consultation going on at the moment and, therefore, that means that you have to be extremely cautious in some of what you say until that process is concluded. I thought I would bring that to the attention of the Committee before we started. Perhaps you would like to introduce yourself and your colleague who came with you, and then if you wish to make opening remarks on this proposal, that would be entirely welcome. But if you want to go straight into questions, that will be equally welcome.

**Anna Soubry MP:** Well, could I just say thank you very much indeed for inviting me along. My name is Anna Soubry and I am the Parliamentary Under-Secretary of State with responsibility for public health, a PUSS, and, of course, therefore tobacco very much falls within my brief. I am very glad for you making clear to all the Members of the Committee that I am, in effect, in purdah. It may be bizarre and peculiar to some of us that a politician is requested and required to be absolutely mute and to express no opinion whatever as to the wrongs or rights, at this stage—the consultation having concluded—but until any decision is made, then it is not for me to give my own views or indeed the views of the Government, other than to say that the Government are entirely neutral and have no policy on standardised packaging. We need to consider lengthy consultation and then we will make a decision. I think it would be very helpful if we go straight to questions, if that is agreeable to all of you.

**The Chairman:** Right.

**Anna Soubry MP:** I am so sorry, Chair, I should have introduced Andrew Black, who is one of my most senior officials when it comes to tobacco. I would not hesitate to defer to him and his considerably greater knowledge than mine on all these matters. But he, like me, is also not allowed to have much of an opinion.

**The Chairman:** Well, as you know, it is entirely appropriate if, at any moment, you feel you would like him to add something or answer questions. That would be entirely welcome to the Committee.

**Anna Soubry MP:** Many thanks.

**The Chairman:** If we could start, I wonder whether you agree that the current Tobacco Products Directive, which was agreed—adopted—in 2001, needs now to be updated.

**Anna Soubry MP:** Yes. A number of reasons lead me and my Department to that conclusion. The tobacco market has clearly evolved. The new non-tobacco but nicotine-containing—what are called e-cigarettes—electronic cigarettes are becoming more widely available and many smokers who want to stop smoking find them very useful in trying to achieve their ambition of giving up smoking. The World Health Organization's Framework Convention on Tobacco Control has come into being since the last Directive. I have to tell you that last week I went to Dublin for an informal council of European Health Ministers and it is quite clear that the European Commission's intention to strengthen the functioning of the internal market in tobacco exists. Within that direction of travel, it is clear to me that protecting public health, particularly by reducing the uptake of tobacco use by children and young people, is widely reflected throughout the European Union. There are, of course—this is important to mark—some Member States which do not wish to see any measures being taken to reduce either consumption or the amount and prevalence of smoking because they grow tobacco in their countries. Some of those—notably Greece, who spoke with some passion in very difficult times for the Greek economy—say that it would be a step too

far if their tobacco farmers found themselves in a position whereby the market began to fall for the sale of their product. I made the point on behalf of the United Kingdom that I thought we would all help in any way that we could to assist those Greek farmers with finding alternatives to tobacco.

**The Chairman:** Thank you for that. This is not of course the first time that the issue of tobacco producers within the European Union has come up. It always comes up when these issues are considered. There are of course alternative ways of handling it within the Common Agricultural Policy which do not necessitate keeping up the level of tobacco production in those countries—helping with alternative crops and so on. It is not the principal area that we are following, but thank you very much. That is helpful.

**Q25 Lord Avebury:** You mention the WHO Framework Convention on Tobacco Control. Do you think the Commission's current proposal is compatible with that instrument?

**Anna Soubry MP:** I do. The Directive will assist Member States to meet their treaty obligations to the Framework Convention on Tobacco Control—what we call FCTC—and implementation of FCTC guidelines will also assist us in meeting those obligations as well.

**Lord Avebury:** There are detailed recommendations in the WHO document on establishing measures to limit interactions to the tobacco industry, to ensure the transparency of those interactions that occur and to avoid conflicts of interests with Government officials and employees. Is that fully covered in the Framework Convention?

**Anna Soubry MP:** I do not know. I think Andrew might be able to assist on that.

**Andrew Black:** If I may take that question, my Lord: the Framework Convention on Tobacco Control includes treaty obligations for parties to protect the development and implementation of public health policies from the vested interests of tobacco manufacturers.

The FCTC includes those obligations on parties. Also, non-binding implementation guidelines have been made to help elaborate the obligation under Article 5.3 of the FCTC to support implementation by parties. The way that we operationalise those treaty obligations in this country is that we invite tobacco companies, wherever possible, to correspond with the Department of Health and we respond in writing as well. In that way we can maximise transparency of the dealings that we have with tobacco companies. Of course, the way that we interact with tobacco companies would also be disclosable under freedom of information.

**Lord Avebury:** Will we have to rely on freedom of information or would you automatically publish any correspondence between the Department and the tobacco industry?

**Andrew Black:** This is an area that we have been giving some consideration to. There are some Government departments that routinely meet with tobacco companies—HMRC and HMT meet with tobacco companies to talk about tax and customs aspects. They routinely publish the minutes of meetings they have with tobacco companies. The Department of Health does not have that many meetings with tobacco companies. We prefer to correspond with tobacco companies to maximise transparency. This is an area that we are looking at to see how we can further maximise transparency in terms of the dealings that the Department of Health have—that we have—with tobacco companies. That might include, for example, publishing our correspondence on the website.

**The Chairman:** Yes. I think it would be helpful if, when you come to a conclusion on that point, you could write to us and let us know what your conclusion has been. Broadly speaking—I think this probably reflects the views around the table—we would prefer to see a great deal of transparency in this particular area because it is one that has been fraught with accusations that consultations have taken place without people knowing what their real

quality was, and so on. You will come to your own conclusions on this but, when you have done so, perhaps you could let us know what your future practice is going to be.

**Q26 Lord Sharkey:** In paragraph 55 of the Explanatory Memorandum you say that the Government are surprised to see the FCTC tracking requirements included in the proposal and that they may possibly go beyond those agreed in the protocol. When you say that you are surprised, does that mean that you oppose this inclusion, or not?

**Andrew Black:** My Lord, if I may address this question: the point of view of the Department of Health, bearing in mind that we have not yet secured cross-government clearance of the Government's negotiating position for this dossier, is that we are certainly not opposed to tracking and tracing requirements and see any means to further reduce the size of the illicit market in this country as being a positive development. The question is whether or not this is the appropriate vehicle to bring in such requirements, whether or not they might be more appropriately and effectively brought into place, say, through the customs regime at European level. There is an issue for the Department of Health as well about whether or not the proposals for tracking and tracing within this Directive go far enough. I mean, there are indeed further mechanisms that could be incorporated into a tracking and tracing system—for example, product authentication—that would enable consumers and retailers to be able to check out an individual packet of cigarettes, for example, to tell if it was a genuine packet. We would argue that functionality like that could effectively be built into a system as well. So we are still considering tracking and tracing across government but we would seek, certainly, to look at the functionality and whether or not the proposals that have been set out represent the least burdensome way forward.

**The Chairman:** These are, presumably, points that you will take up in the negotiations that will now take place. If I have rightly understood what you are saying, all your response is

consistent with the belief that there needs to be a European approach to this tracking and tracing, not 27 different approaches. Is it correct to say that?

**Andrew Black:** Minister, if I may: there is another important consideration with respect to tracking and tracing and that is the recently made protocol under the FCTC on the elimination of illicit tobacco products. Within that protocol there are recommendations for the establishment of a tracking and tracing system. I understand that the compatibility of the illicit trade protocol with current European customs requirements is still being considered at European level. I think that those considerations need to be had before we can really find a definitive position on tracking and tracing within this protocol. That is a matter that we will be taking up with the European Commission as part of the negotiations on the dossier.

**Q27 Viscount Bridgeman:** A very simple question, Minister: are you satisfied that the Government's proposals have a proper legal basis?

**Anna Soubry MP:** I think the answer to that in simple terms is yes. The legal base for this proposal is Article 114 of the TFEU, a shared competence, and, in general, the advice that I have received is that the proposal is within the scope of the stated legal base.

**Lord Richard:** Can I follow that on a bit? In terms of subsidiarity, as I understand it the legal base of the existing Tobacco Products Directive was challenged by the European Court of Justice in, what, 2002, 2003. The judgment was that it was a proper legal base and that that was fine. Have you got any queries or doubts about subsidiarity on this because a number of other countries, as I understand it, have put in Reasoned Opinions and have got within about two votes of getting to the yellow card case now. Are you happy that we can stand on what we have got on subsidiarity?

**Anna Soubry MP:** I am going to defer to Mr Black, again, and then add my own views.

**Andrew Black:** You are right in terms of the existing Directive having been through the course of legal challenge and being found to be legal. In terms of subsidiarity, I think that we

are in the process at the moment of going line by line through the proposed Directive. Certainly, we will be making the case that the measures set out within the Directive need to be proportionate, evidence-based and respect the principle of subsidiarity.

**Lord Richard:** Does that mean that we have not taken a position on subsidiarity yet?

**Andrew Black:** I would reaffirm what I said a few moments ago: the cross-government negotiating position has not been settled yet.

**Lord Richard:** But you are obviously looking at it again to make sure that you are right about subsidiarity. So there is a doubt about it?

**Anna Soubry MP:** I do not think it is quite as simple as saying that you look at it because you have a doubt: you look at it because you want to make sure you get it absolutely right.

**The Chairman:** If I could just say this: I have looked at some of these papers and the Reasoned Opinions produced by other national parliaments, and the tentative reaction of myself and the clerk when we discussed this was that some of what is called subsidiarity and the Reasoned Opinions on it were actually objections to the Commission's proposal being too obtrusive in some aspects or, alternatively, giving them the possibility to extend their reach in implementation beyond what would be reasonable in the view of many Member States. I think that it is slightly dubious as to whether that is really about subsidiarity. It is something that will be covered in the negotiations, but have I got that about right?

**Anna Soubry MP:** It sounds good to me.

**The Chairman:** Anyway, it would be helpful if you could tell us in due course. Of course, it will be a continuing dialogue between us as to where you come out on this. The facts are that the deadline for pleading overall subsidiarity has now passed and we have not raised or drafted a Reasoned Opinion, and you have not asked us to do so. I think that that is the reality.

**Andrew Black:** My Lord, that is correct. What I would say though is that we are, in particular, scrutinising the use of implementing the delegated acts through the proposal. That is the one aspect that we are looking at very carefully to make sure that those aspects are proportionate. If we consider that they are not, we will make the case for them to be removed.

**The Chairman:** In the negotiations, of course. No doubt there will be quite a lot of support from all those countries which have produced Reasoned Opinions and are likely to be coming from the same direction.

**Lord Richard:** The Bundestag—or is it the European committee of the Bundestag?—has decided not to adopt a Reasoned Opinion on this. Is it the Bundestag as a whole or just a committee of the Bundestag?

**Anna Soubry MP:** I do not know.

**Andrew Black:** I am not sure.

**Anna Soubry MP:** We can find out.

**Q28 Lord Sharkey:** Do you think that the proposal will produce a level playing field, both in terms of the marking requirements for tobacco products and the public health requirements, across the members of the EU?

**Anna Soubry MP:** Well, we agree with the European Commission's assessment that there should be positive competition effects in the UK and the EU tobacco markets, with greater harmonisation of different countries' legislation and a more level playing field created among economic actors, as they are called, including manufacturers, as the Directive seeks to reduce the variation in national regulations. The proposed Directive should bring greater consistencies, which should be helpful for business as well as advancing public health across the EU.

**Lord Sharkey:** Have you had any representations from the players, the actors, about the fact that the playing field is not level?

**Anna Soubry MP:** Have we in the Department of Health?

**Lord Sharkey:** Yes.

**Anna Soubry MP:** Mr Black may have but I certainly have not. Nobody has come to my door but that does not mean to say that they have not come to the door of the Department.

**Andrew Black:** We have received representations from tobacco companies that contain their views on the proposal as it has been set out. I cannot say that I remember any specific representations in the past, before this proposal was published, that complained about a level playing field for manufacturers across the European Union.

**The Chairman:** When the Tobacco Manufacturers' Association gave evidence to us last week they complained about it—you can find that on our website—because when they were asked this same question they said no, they did not think there was a level playing field anyway, and they did not think this would do anything to improve it.

**Anna Soubry MP:** These things are always difficult, are they not? I speak as the Minister for Public Health and it is absolutely part of my responsibility to do everything that I can to make sure that the public health of the nation is improved. It is undoubtedly the case that if fewer people smoked, the public health of the nation would improve. Equally, we would save a considerable amount of money in our National Health Service.

**The Chairman:** Absolutely.

**Andrew Black:** My Lord, I would make the point as well that it depends on what you believe is a level playing field. If you are a tobacco manufacturer you might want the level playing field to minimally interfere with your business, whereas if you are a public health advocate you might suggest that the level playing field represents bringing Europe up to the best

practice across Europe. I want to let you know that the UK is seen as a leader in tobacco control, certainly across Europe. It is probably seen as the strongest Member State in terms of the tobacco control policies that are being implemented. Certainly we would not want to see a level playing field that meant that requirements were reduced in any way in public health terms.

**Anna Soubry MP:** Could I add that when we discussed this at the last informal Council last Monday and Tuesday—I think the Irish would like to take more of the claim to being at the forefront of reducing smoking than us because we followed in their wake when it came to the ban on smoking in public places—I was able to say to my European Union colleagues that, as a result of the legislation in 2007, we have already seen, we are confident to say, a reduction in the number of people presenting in hospitals with heart attacks? But most significantly, the number of children reporting to hospital with acute asthma attacks has fallen and, at the moment, the only explanation that can be advanced is this is because of the legislation that was passed in 2007.

Perhaps I may follow that through? I speak as an ex-smoker—I stopped smoking in 2008—and I am one of those people who, in the wake of the legislation of 2007, found that my smoking was socially unacceptable. I know that I changed my smoking habits in my own home. I began to smoke very rarely in front of my children because I accepted that they might take grave exception to their mother smoking and their having to inhale my smoke. That is actually one of the reasons why we think there has been this reduction in the number of children with severe asthmatic attacks. Their parents may not have stopped smoking altogether but they have stopped smoking in front of their children, accepting the effects of second-hand smoke and, in any event, the social unacceptability of smoking. I said that at the European Union's meeting of Health Ministers and, without sounding big headed, I think genuinely that other Ministers heard that and very much took the point. I think this is

something that is perhaps not always recognised. It is becoming increasingly a matter of protecting children's health—it is becoming a child protection issue—without impinging on the rights of an adult. If he or she wishes to smoke, that is their choice, but it is where it begins to affect children, in particular, that many Member States are looking at the advantages of intervening to protect those children.

**Q29 Lord Avebury:** Do you believe that the current proposal adequately reflects the outcomes of the Commission's public consultation in 2010 on the revision of the Tobacco Products Directive?

**Anna Soubry MP:** Again, yes. We think that the Commission has fairly reflected the results of the consultation in its proposal. Of course, in a controversial area of public policy such as tobacco controls, some people will like what is proposed and some people will not like what is proposed. Having said that, we are mindful that a small number of issues that are covered in the proposal were not included within the European Commission's consultation, including provisions to limit the diameter of cigarettes which would bring what we call slim cigarettes to an end in the UK. However, additional issues are likely to be raised through consultation and the European Commission should have the latitude to bring forward additional proposals in areas that were unearthed during the consultation. That is the whole point, of course, of consultation.

**The Chairman:** Could you, just on that point—I should have raised this earlier at the introductory moment—explain to us what the scope of the consultation is that the British Government are undertaking at the moment?

**Anna Soubry MP:** On standardised packaging, do you mean?

**The Chairman:** Right. It is just on packaging?

**Anna Soubry MP:** Yes.

**The Chairman:** It does not cover the issue of slim cigarettes and that kind of thing?

**Anna Soubry MP:** I do not believe that it does, no. But that could be a consequence of plain packaging. It is not plain packaging; it is standardised packaging. One of the effects of that could be that it would impact on the long, thin, slim cigarette.

**The Chairman:** Yes. That is the consultation you are undertaking. What is the end date for that consultation?

**Anna Soubry MP:** The consultation, my Lord, has finished, and the results, as you might imagine, are considerable. There are a number of submissions and files to be considered. We are now in the process of considering all of the responses that we have had as a result of that consultation. I wish I could give you some sort of timeline on this, to use that expression—in other words, I wish I could give you a timetable—but I am afraid that I do not believe that I can give you a timetable.

**The Chairman:** It is not too time-sensitive for us but obviously we will ask you, when we correspond with you after this meeting, to send us the results of the consultation when you have them. That may lead on to further correspondence. I understand that you cannot put a precise date on it.

**Anna Soubry MP:** No, but it is always helpful, my Lord. When you have a highly controversial proposal, while one never wants to rush it through, on the other hand I think it is always good that there is some sort of timetable because minds are totally concentrated and, if progress is to be made, it is made as quickly as possible.

**The Chairman:** Presumably, one of the time constraints on you is the need to negotiate in Brussels on this Directive, which is not entirely in your hands.

**Anna Soubry MP:** Indeed.

**Q30 Lord Avebury:** Are there any other issues that have arisen since the 2010 consultation that you believe should be the subject of further consultation, such as the development of new psychoactive substances?

**Andrew Black:** My Lord, the consultation that the Minister speaks of was specifically a consultation on standardised packaging.

**Lord Avebury:** I am talking about at the European level.

**Anna Soubry MP:** At the European level.

**Andrew Black:** Oh, I beg your pardon. The European Commission's consultation was certainly well responded to and the European Commission has carefully considered the responses, from what we can see, as well as other relevant information and evidence. Whether or not there is a need to consider other aspects of tobacco within the tobacco Directive certainly was not included in the proposal that we see before us. I cannot speak for the Commission and I have not been privy to all the responses that were received at the Commission, so I am not too sure that I am able to answer that question.

**Lord Sharkey:** Do you believe that the Commission's scientific and evidence base for this proposal is sufficiently robust?

**Anna Soubry MP:** We know that the Commission has given scientific evidence and other relevant information, in our view, proper consideration in its proposal and impact assessment. The Commission was clear during its consultation that it was seeking evidence from interested parties. Where the evidence is unavailable, this seems well communicated, and proposals seem to be formed in a transparent manner—which, of course, is important—and that acknowledges any gaps in the evidence base. In the EU impact assessment analysis of impact, significant attention has been given to health impacts, which is perhaps where the scientific evidence is most pertinent.

**Lord Sharkey:** In the Explanatory Memorandum, at paragraphs 39 and 48, the Government say that they would need to carry out their own analysis in two specific areas. Can you tell us whether the Government have in fact carried out these analyses and, if so, can we have sight of these?

**Andrew Black:** My Lord, we are certainly giving our own consideration to the scientific evidence that has been cited by the European Commission and to evidence that we are aware of as well. One example of that is with respect to pictorial health warnings and the impact that health warnings might have on public health. There is certainly a growing evidence base in this area. So that is one example of an area where we are also looking at the other scientific evidence alongside what the European Commission have set out in their impact assessment.

**Lord Sharkey:** Does that mean that you have in fact carried out your own analysis and have reached a conclusion?

**Andrew Black:** With respect certainly to picture health warnings we have.

**Lord Sharkey:** And the reduction in the appeal of tobacco products to children in paragraph 48?

**Andrew Black:** That is an area that we are still considering in cross-government terms. It will be, I guess, finalised as part of the negotiating position that is eventually reached.

**The Chairman:** In the next question we are going to run those two together, I think.

**Q31 Lord Sharkey:** Turning now to the inclusion of the non-tobacco nicotine-containing products within the proposal, do you agree that they should be included within the scope of this proposal?

**Anna Soubry MP:** Well, we want to be sure that the proposal's approach to the regulation of nicotine-containing products aligns with work currently being taken forward by the Medicines and Healthcare products Regulatory Agency. Certainly I attended a meeting last week with Earl Howe on this very subject. We discussed it, as you might imagine, at some length and in some detail. I do not know whether I can add much more to that. Again, it is difficult and tricky work because one has to accept that for many people who want to give up smoking this is often a very important way in which they reduce the amount of cigarettes

that they smoke, with the ultimate aim of giving up completely. In my view, it is about striking that balance. There is another argument that is often put into the mix that these sorts of products actually enhance the acceptability of smoking. So there is a lot of balancing to be done with it. I do not think I will add anything more unless Andrew wants to add something to that.

**Andrew Black:** There just is one other thing that I would say, and that is that the way that nicotine-containing products are dealt with across Europe is very disparate. By including the proposals within this Directive, it will seek to ensure a more consistent approach to dealing with nicotine-containing products. As the Minister says, it might be helpful for smokers who want to quit if they are reassured about their safety, efficacy and quality. In that sense, the UK certainly welcomes the fact that nicotine-containing products have been given some consideration. Whether or not the detail is right, we are still considering. There is one aspect of the proposal, though, that we do not agree with. It is specifically about the proposed health warning for nicotine-containing products, which we believe is not necessarily evidence-based. The warning is about nicotine being harmful and, of course, we know that the majority of harm from smoking comes from the smoke itself rather than from nicotine. So, again, we will work with other Member States and with the Commission to find a warning that is more appropriate and evidence based.

**Anna Soubry MP:** It is obviously completely contradictory to say that this may assist you in giving up smoking if it has then got a health warning on it. We also have to put into the mix the fact that some of these e-cigarettes are now being flavoured with bubble gum. So we have to ask the question that if this is seen as an aid to giving up smoking, why would you need to flavour it with bubble gum? Or are you actually perhaps looking at the fact that it might be attractive to young people, who somehow see it as an alternative to smoking but,

as soon as you are legally able to buy real cigarettes, you might switch from the electronic bubble gum-flavoured to the real thing.

**Lord Sharkey:** That was very helpful. I shall just ask you a quick follow-up question. In paragraph 27 of the EM, you talk about the research that is currently under way and looking at the levels of nicotine that have physiological effects. Can you give us any idea of the progress of that research?

**Andrew Black:** My Lord, I can answer that question. The research is under way. I am aware that some of the results have been delivered to the MHRA and have been shaping MHRA's thinking and policy development in this area. I guess the most significant aspect of that research is looking at the threshold limits. That will inform the discussions that we have on this proposal, where threshold limits are set out as well. We believe that this research will be informative in terms of the debate about getting the detail of this aspect of the proposal right. Certainly, we can provide the Committee with more information on the research. We will ask MHRA for more information and, when the Minister writes, she can include that information in the letter.

**Lord Sharkey:** Thank you. That is very helpful.

**Q32 Lord Blencathra:** We have received some written evidence from a doctor and he seems to be suggesting, if I understand the scientific figures, that the amount of liquid nicotine in the e-cigarettes would be insufficient to keep smokers hooked on the electronic one because it is too low. He seems to suggest that unless the amount of nicotine liquid in e-cigarettes is slight higher, or at a level compatible with what a 20-a-day smoker would get, then people will find that they are getting no kick from these electronic cigarettes and will all switch back to normal fags. Do you accept there is some argument there which your scientists are looking at—the level of nicotine gel, liquid, whatever?

**Anna Soubry MP:** The straight answer is yes. For example, there is an argument to be advanced that you could actually buy different strengths of nicotine within an e-cigarette as part of your programme, your own personal plan, to stop smoking. For example, I stopped smoking, not overnight and by going cold turkey, which I would have found exceptionally difficult, but by slowly reducing the amount of cigarettes that I smoked, down and down to one or two a day until I finally stopped smoking. I never did stop smoking; I just stopped buying cigarettes and scrounging them from other people. These are the kind of psychological games that one plays. For those people who do want to give up smoking, I can see that they may well want to move on to e-cigarettes, or supplement them in some way and then move fully on to e-cigarettes, and then reduce the amount of nicotine until the time comes when they are actually able to say, "I am no longer engaging in this".

**Lord Blencathra:** Is that an argument that you would make in your discussions with the EU?

**Anna Soubry MP:** Yes. Very much. Well, I would hope so. I have just dropped my official in it now. No. I mean you have got to, have you not?

**Q33 Lord Richard:** I want to deal with the same matter. We have had an interesting letter, out of the blue, from a Dr Upton in Falmouth. He said: "I have today watched with interest the committee meeting regarding the" European Tobacco Products Directive, and then he sets out in great detail the scientific evidence. He comes to this conclusion: "I am embarrassed to admit that I was a smoker myself until August 2012". He then goes on to talk about e-cigarettes. He said, "I tried an e-cigarette at my wife's insistence during July of last year with the full expectation that it could not possibly work. I made the assumption that with the amount of money that the NHS spends on smoking cessation, e-cigarettes would've been recommended by my own GP, had they been safe and efficacious". He had a sort of Damascus moment, as far as one can see. He then came to this conclusion: "I am

now convinced that we currently cannot say that e-cigarettes are safe (and we will almost certainly be unable to do so objectively for another 10 to 20 years). However, I strongly believe that the evidence of analyses that I have seen in peer reviewed documents indicates to me that e-cigarettes are somewhere between 95-99% safer than combustible cigarettes and that they may prove to be 100% safe—only time will tell”. Do you share that conclusion?

**Anna Soubry MP:** I could not say that I do or do not because I do not have the requisite knowledge, skill and expertise to say so. What I would say is that I hope you will share his views with me and I will put them through to the Department and into the debate—because we clearly are having a debate—as to what we should do with these cigarettes. No doubt these are good points well made.

**Lord Richard:** But do you take the basic point that an e-cigarette is safer than a combustible cigarette?

**Anna Soubry MP:** Oh yes. I do not think anybody would argue that it could be anything other.

**The Chairman:** Minister, we will give you a copy of this, which all Members of the Committee have had. It is a well thought-out and polite approach. We will, of course, after we have done our enhanced scrutiny, reply to this gentleman. I think perhaps you might like to reply to him also in due course because it is the sort of intervention by members of the public which is thoroughly to be welcomed.

**Anna Soubry MP:** Absolutely. I am very grateful because I now have a copy of his e-mail which, even better, has his e-mail address. So my officials can get on to that—I was going to say immediately—probably next week.

**The Chairman:** If perhaps you could share with us any reply that you make, that would be very helpful.

**Anna Soubry MP:** Yes of course. We will undertake absolutely to do that.

**Lord Richard:** Could you address particularly the point he makes about the percentage safety?

**Anna Soubry MP:** Indeed. It is a most important point.

**Andrew Black:** My Lord, may I just come in on this particular question to let you know that the National Institute of Clinical Excellence is also producing public health guidance in the area of harm reduction and tobacco use? It is looking specifically at this issue and at whether or not there are nicotine-delivery products that are safer to use than combustible tobacco. That public health guidance should be available in the middle of the year. We will certainly point to the correspondent to that and provide links to the Committee as well.

**Anna Soubry MP:** And finally, I mentioned that I had had a meeting with Earl Howe and that various bits of work have been effectively commissioned as a result of that. People have had to go away and take up some of things that we have discussed. Again, any findings or anything that comes out of that I am more than happy to share, of course, with this Committee.

**The Chairman:** Thank you. That is helpful.

**Q34 Viscount Bridgeman:** I think Mr Black has referred to this, Minister, but do you consider that the sale and marketing of some categories of tobacco products, including slim cigarettes, can mislead consumers by creating the impression that they are less harmful? We are aware, of course, of the recitals in the Commission proposal which states that: “The package and the products may mislead consumers, in particular young people, suggesting that products are less harmful. For instance, this is the case with certain texts or features”. It then gives a number of examples: “‘low-tar’, ‘light’, ‘ultra-light’, ‘mild’, ‘natural’, ‘organic’, ‘without additives’” and so forth. Do you consider that this is a problem which must be addressed? We are dealing, of course, with the media handling departments of the tobacco industry, who are very resourceful and persuasive people.

**Anna Soubry MP:** Unfortunately, I am not in that position. I certainly cannot give my own opinion, and the Government have no view, because of this purdah that I have described—this period until we have come forward with any proposals, if we have any, on standardised packaging. However, it may be of some assistance to the Committee that Commissioner Borg made a speech, or submission, to the Council of European Union Health Ministers last week. It may well be that his comments will be of particular assistance to this Committee when he said that a cigarette, if it is a tobacco product, should look like a cigarette, and other comments that he made about flavouring and so on. I could not possibly comment on his comments, but I am sure your Lordships will find his comments of particular interest. Let me put it in that way.

**The Chairman:** That is helpful. Presumably you are talking about a statement he made at an informal meeting of Health Ministers?

**Anna Soubry MP:** Yes, but there is nothing private about his statement.

**The Chairman:** I was going to say that normally they would not be published. Are you able to let us have some account of his remarks?

**Anna Soubry MP:** Indeed, I would be more than happy to do exactly that.

**The Chairman:** It would be helpful for us to have that. If you could help us, that would be welcome.

**Anna Soubry MP:** I think it shows, if I may say so, the travel of thought, as we put it.

**The Chairman:** We will look forward to reading those remarks from the Commission when we draft our letter to you.

**Viscount Bridgeman:** I think it falls into the category of reassurance techniques on the labelling. May we leave you with that sentiment when you come out of purdah?

**Andrew Black:** My Lord, there is one aspect of the labelling of tobacco packets, with respect to potentially misleading aspects of that labelling, that we can say something about:

that is the removal of tar, nicotine and carbon monoxide yields from the pack. That has been recommended through this proposal and we believe that there is good evidence that providing this kind of numerical information can be misleading because it can encourage smokers to, I guess, look for what they think is a safer cigarette by comparing the different yield numbers on the sides of packs. We know that the smoking of any cigarette is very harmful and we will be certainly arguing for the removal of these TNCO yields from the sides of packs, as was set out under the Government's tobacco control plan that was published a few years ago.

**Q35 Lord Blencathra:** Could we come on to a question about plain packaging, standardised packaging and then the illegal criminal trade? Minister, are you able to tell us what is your opinion on the merits of plain packaging or, if that would breach your purdah, perhaps you could briefly give us what you consider to be the pros and cons of plain packaging? That keeps you neutral.

**Anna Soubry MP:** The argument in favour of standardised packaging is best summed up in this way: the aim is to make the packet itself and the process of unpacking it, unravelling it—the touch, the feel, the look of it—completely unattractive, not to those who have chosen, as adults, to smoke but particularly to young people. There are many smokers—ex-smokers as well—who will talk about how they remember that it was the attractiveness of the packet that led them to buy it and therefore to smoke their first, or maybe a second or third, cigarette. We know that the package itself plays an important part in the process of young people and their decision to buy a packet and to smoke cigarettes.

Those in favour of standardised packaging also make this important point: they say that there is evidence—and they are right; I have some of the packets in my office which have been shown to me—that the tobacco companies have changed their packaging quite deliberately to make very small packets of cigarettes that young women can slip into a small clutch, or

even into a part of their clothing, when they go out of an evening. They have made some of those packages look almost like little scent bottles, scent containers; they have coloured them, therefore, to make them attractive, especially to young women. If one thinks about it, of course, this is absolutely obvious because anybody who has a business knows the power of packaging and the importance of it in increasing or maintaining their sales—this is speaking the obvious—and tobacco producers are no different.

The counter-argument to it is that it will cause a reduction, in any event, of sales among current smokers. They will turn away from smoking cigarettes and sales will fall, and that will have an impact on small shopkeepers in particular. Many people are concerned about the economy of small shopkeepers. The counter-argument, of course, is that if one chooses not to buy a packet of cigarettes, that does not mean to say that that money will go into a piggy bank necessarily or be squirreled away in some other place; it might well be spent in that shop or somewhere else. But there has been a concern about the effect on sales, particularly for small shops.

The other point that is advanced is that it will make the counterfeiting of cigarettes, which is a problem at the moment, even worse. My response to that, to be blunt, is that I am slightly confused by that argument. Technology is such that there are all manner of ways in which one can ensure that a particular product is a genuine product. There are ways of doing that. I have made that very clear. I have had meetings with Members of the House of Commons, notably from Northern Ireland, specifically on that issue. They have raised it with me. They are very concerned about counterfeiting and they have been quite clear with me about its links with other criminal activities of the sort you might imagine in Northern Ireland. They have raised those concerns with me. I have heard their arguments and I certainly take them on board.

**Lord Blencathra:** On that, if I may jump a little bit—I will come back to what you may consider are the EU's views—as you have mentioned counterfeiting, we have had evidence in from Roy Ramm, who is a former commander of Scotland Yard's SOCA, making the point that plain packaging would give a huge boost to the counterfeit trade and that a lot of that money would go into criminal organisations, including some terrorist organisations. The tobacco manufacturers and the companies state that the best way, or one of the best ways, to prevent counterfeiting is to constantly change sophisticated packaging, with holograms and all that sort of stuff, which is expensive to produce. If one went to a standardised plain packaging, which any kid could reproduce on his laptop computer and a cheap printer, it would give a huge boost to the counterfeit trade across Europe. Do you accept any point of those arguments or suggestions?

**Anna Soubry MP:** For my part, I am afraid that I do not. I take the view that the police have the ability and the powers to make sure that counterfeiting of cigarettes is in their remit and that they can do things about it, as they do already. They need to make sure that they have the will. I completely accept that sometimes it can get into more organised criminal activity but then, in all these arguments, one has to balance a public health interest and be aware of the facts, and the facts are that it has been calculated—I do not think this is disputed—that some 80,000 deaths in England are attributable to smoking.

**Q36 The Chairman:** Could I just ask you to what extent you are taking the views of the departments—what you might call the law enforcement departments, which in this case, presumably, are the Home Office, the HMRC and the Treasury—into account in coming to a conclusion that would enable you answer the point that Lord Blencathra is making?

**Anna Soubry MP:** Completely and totally. For everybody who has taken part in a consultation, their views all have the same weight. When colleagues make these arguments and raise these concerns, I particularly listen to any concerns when it comes to extra

pressure on the police, difficulties caused to our police, to HMRC or to any other part of government. I listen—of course I do. They are important arguments and they must be listened to and taken into account. In all matters of the nation's public health, a balance, a question of proportionality, always has to underline it. So good intentions sometimes cannot be carried out because there are other factors to be taken into consideration. It is important that you take all matters into consideration and that you balance the pros and the cons.

**Lord Blencathra:** Do you accept that there could be a legitimate argument that it would make the task of HMRC and the police much more difficult in dealing with counterfeiting if every fag packet in Europe looked the same—or looked the same with four or five standard designs?

**Anna Soubry MP:** No. You can do things such as holograms to those packets to make sure that they are not counterfeited. You can put a strip around them and contain information within that strip, as we do on some drink bottles, which shows their authenticity or otherwise. I do not know whether Mr Black wants to add to that.

**Andrew Black:** One thing I would add, my Lord, is that this was a specific question that was asked in the Government's consultation on standardised packaging. We have had, as the Minister said, many thousands of responses back. This is one point where we received a great wealth of information and we are looking at it all very carefully and at all of the arguments that have been made, not only with respect to the potential for illicit trade to increase as a result of standardised packaging but other aspects as well. That is part of the decision-making process now. Of course, decision-making around standardised packaging will be across Government, and other departments, including HMRC, will have a voice in the decision-making process.

**Lord Blencathra:** Following the discussions in Dublin, in your best guess, do you think the EU is likely to head down the plain packaging route?

**Anna Soubry MP:** I genuinely cannot answer that because I genuinely do not know. I genuinely do not know the answer to that question.

**Lord Blencathra:** Okay. Could I ask about the British Government's view? The Explanatory Memorandum says that the question of standardised packaging should be left open for Member States to decide, yet on 5 March we read in the *Guardian*—I take it it must be true because it was in the *Guardian*—that the Queen's Speech may have an announcement that the British Government will go for plain packaging even if the EU does not.

**Anna Soubry MP:** I genuinely do not know the answer to that. I genuinely do not know whether or not the Government will put such a proposal into the Queen's Speech.

**Lord Blencathra:** Would you recommend it from your Department? Would you recommend that they should?

**Anna Soubry MP:** You know that I cannot give my view. You are being very naughty, my Lords.

**The Chairman:** I think we really must respect the Minister's position with respect to the public consultation. When you do have a view and you can give your view, could you possibly share it with this Committee, please?

**Anna Soubry MP:** I would be delighted to share it with the Committee—and, indeed, with anybody else.

**Q37 Lord Blencathra:** Finally from me, we heard from the Cancer Research organisation that the criminal trade was about 9%; the tobacco manufacturers say that it is about 21%, equating to about £2.9 billion, I think. Which of those figures do you think is closer to the mark? Have you any information on the extent of the criminal trade?

**Anna Soubry MP:** I do not know. I just do not have that figure, my Lords. I am awfully sorry but I cannot assist. If you wish me to, I will make further inquiries without any hesitation.

**The Chairman:** Could I just come in on that one? This Committee spends a lot of its time looking at aspects of Europol's work, the agency in The Hague which tries to bring together law enforcement activities across a whole range. We have looked at the work that they do on drugs, on criminality and in connection with horse meat; we have looked at their counter-terrorism work and all that sort of thing. What strikes me on seeing all this evidence is that there is this enormous illicit trade in tobacco products which is, quite clearly, international and very heavily European because the countries are all largely contiguous with each other. To what extent do you think that Europol's facilities and abilities are being made full use of in this matter?

**Anna Soubry MP:** I would not be able to answer that. I do not know whether Mr Black would. This is strictly my own view but I think that one of the reasons why we have a counterfeit trade—this may be absolutely obvious—is because of the high price of cigarettes. I know from my own work, when I was a criminal barrister, that the reason why it was in a particular area of Nottingham that you found a prevalence of counterfeit cigarettes was because it was considerably cheaper than going into the local shop or supermarket and buying them. There are some who would advance the argument that it is a question of pricing as opposed to questions of plain packaging.

**The Chairman:** You are not going to be discussing that with the Chancellor of the Exchequer just at the moment, I imagine.

**Anna Soubry MP:** It is a bit higher than my pay grade.

**Q38 Lord Avebury:** Just going back to your remarks about holograms and electronic strips, does the Directive allow for that? Do you think that that kind of device would be practicable, considering that to detect the false products sophisticated methods of examining the packaging would be required for the police to identify them?

**Anna Soubry MP:** Mr Black is very keen to answer that one.

**Andrew Black:** My Lord, you might recall, with respect to our discussion on tracking and tracing, the idea that a tracking and tracing system could include a provision for product authentication. A retailer or consumer would be able to take a packet and be able to scan a code or type a code, say, into a website and be able to immediately authenticate the authenticity of the packet that they are holding. On the question about whether or not such a system could be implemented domestically or at a European level, we are going to have to go back to our colleagues at HMRC to take their advice to be able to provide the Committee with the best information. Turning back to the question about the Europol agency, what I would like to advise the Committee is that counterfeit trade in tobacco is an OLAF lead within the European Commission. I would expect that OLAF is probably liaising with Europol, but it is OLAF that has the lead.

**The Chairman:** Well, the work of OLAF is being looked at by our sister Sub-Committee E, and that will be of interest to them. The evidence that we have had over the months that we have been taking evidence is that OLAF and Europol now work more closely together than they did in the past. They certainly need to because I cannot believe that the activities of the people who run these operations ought to have escaped from Europol's activity too.

**Q39 Viscount Bridgeman:** Taking up the source that Lord Blencathra was quoting, I met one of the senior police officers involved in organised crime, one of the authors of that letter. He was in no doubt that the plain packaging is going to be a counterfeiter's charter. On the example given of barcode readers, the average young buyer is not on the whole going to be expected to be carrying a barcode reader in his pocket.

**Andrew Black:** My Lord, the words that you use are familiar to us. I think that a tobacco company in their consultation response used the term "counterfeiter's charter". So we are aware of the arguments that have been made. Of course, product authentication would not

require someone to be carrying around a reader. You could use a website—type, for example, a code into a website—or use a mobile telephone, for example, to do that.

**Lord Blencathra:** But they are plain packets in any case.

**Anna Soubry MP:** But they are not plain. I am terribly confused. They are not plain. They are standardised. You can put any device upon it to show that it is authentic in the same way that you can now. I do not understand how, if we have standardised packaging, somehow that changes the ability to determine whether it is an authentic packet of cigarettes or not. All that is changed is that instead of, for example, the gold and the white and the font of Marlboro Lights, or whatever, there is another picture, there are different colours and there are different fonts—but it will still say Marlboro on it; it will still have exactly the same barcode and anything else that any manufacture may wish to put on it to make it authentic. I would like to go back to this police officer because he may not understand that it is not a plain item but a standardised item. It will still have colour and printing on it and so on, but what it will not have is all those features that make it attractive, in particular to young people and, of them, young women.

**Viscount Bridgeman:** I think the point he was also making was that it actually makes the counterfeit industry's job easier because there are rather fewer things to copy.

**Anna Soubry MP:** I accept that is a very good point. However, there are still ways that you can authenticate, as has been put forward.

**Lord Blencathra:** But only if there is space on the packet to do so.

**Anna Soubry MP:** I am sure that, if this idea goes forward, then if anybody wants some space on it so that some device might be introduced to authenticate that packet of cigarettes, I am sure that space can be found. It does not seem to have been a problem in Australia, my information tells me.

**Viscount Bridgeman:** The other point that they made was that the counterfeiting or importing of duty-paid tobacco from elsewhere into this country is low-cost, high-margin and relatively risk-free for the organised crime industry. They spoke with a certain amount of passion of the funds that are made available for the more serious forms of organised crime. The Chairman and yourself have also referred to liaison with the law enforcement bodies. I think that is terribly important. I am sure that you will agree.

**Anna Soubry MP:** It is terribly important, I would agree. I am not for one moment suggesting that tobacco is in the same league of unlawful illicit drugs. However, if we were to take the argument that these things are often difficult to police, then we would take the view that we would repeal all our legislation to make cannabis, heroin, cocaine and other illicit drugs lawful. It costs this country an awful lot of money in order to police our borders and stop those illegal drugs getting in. Of course, you cannot make heroin in this country; you can only bring it in through borders. It is the same with cocaine. But we do not take that view for reasons which I hope are obvious to this Committee.

**Andrew Black:** My Lord, may I just add as well that HMRC have a long-running strategy in place to counter illicit tobacco? That strategy has proved successful. Over the past decade or so the estimated number of illicit cigarettes has gone down significantly. What we will do to help your deliberations is provide more information about the illicit market and the Government's strategy to reduce illicit tobacco. The other point that I would make is that the Commission's proposal does not include a proposal for plain packaging specifically. I just make that point.

**Viscount Bridgeman:** For what packaging? I am sorry.

**Andrew Black:** The proposed Directive does not include provisions for plain packaging, for standardised packaging. I just wish to make that point as well.

**Lord Blencathra:** Perhaps I may give the Roy Ramm letter and the Sheridan letter to the Minister and her officials and ask for a response to it. Those are the ones who make the point about funding terrorism and so on. It is the one Lord Bridgeman also referred to.

**The Chairman:** Perhaps in due course, Minister, when you have had a chance to look at the approach that has been made to the Committee, either you or your colleague here could let us have a note on your response to those points. That would be helpful to us.

**Anna Soubry MP:** Of course.

**Q40 The Chairman:** If there are no more questions, can I thank you for coming along and helping us with our enhanced scrutiny this morning? We will, as I say, be writing to you when we have looked at all the evidence and the views that have been submitted to us, including those that you have put forward. I have a feeling that this will be part of a continuing dialogue because this Directive is not going to be approved just like that. We would certainly hope that the Department will keep us closely involved with the negotiations and that we will be able to go more deeply into these things after you have finished the consultation on plain packaging. You very helpfully promised a number of bits of evidence this morning and we look forward to receiving those. Thank you very much.

**Anna Soubry MP:** Thank you. I am just sorry that I could not be of more assistance to you.

**The Chairman:** No, it is entirely understood. Thank you.